

cap plan, but rather that the price cap plan be flexibly designed to incorporate these later decisions that the Commission might release.

The overarching goal of a price cap regime (*i.e.*, to reduce regulatory burdens while *simulating* some of the disciplines of a competitive marketplace) can be more efficiently and effectively achieved through the development of *actual* competition. Therefore, the Commission must continue its various initiatives that will facilitate progress from today's virtually noncompetitive market to effective competition. Some of these issues include establishing just and reasonable rates for expanded interconnection, implementing number portability, and progress with the advanced intelligent network proceeding.³³ The Commission's efforts in these areas promise a receptive environment for competition and must not be frustrated by the revised price cap mechanism.

The Commission should continue to move forward with its investigation into the lawfulness of the LEC rates for expanded interconnection so that just and reasonable rates can be implemented.³⁴ Economically efficient rates for expanded interconnection will encourage the design and implementation of new and/or improved services, thus achieving many of the Commission's goals. Also, Time Warner recommends that the Commission ensure that the revised price cap mechanism factor take into account the probability that new rates for expanded interconnection will be

³³ Time Warner notes that certain of these issues are mentioned by the Commission throughout its NPRM. *See*, NPRM, paras. 2; 20; 91.

³⁴ The Commission concluded that "[i]n view of the numerous deficiencies in the LECs' direct cases, we find that the LECs have thus far justified neither their overhead loading factors nor their comparisons based on closure factors using prospective costs. Based on the current record, the LECs have failed to meet their burden of proof . . . we must find the LECs' originally filed rates for expanded interconnection to be unlawful." *Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection for Special Access*, First Report and Order, 8 FCC Rcd 8344, para. 34 (1993).

implemented and that such rates may at some point be moved into LEC price caps.³⁵

The development and implementation of number portability in a uniform and consistent manner for the entire country is another important way to achieve the Commission's goal of competition. The ability to "take your number with you" when and if you decide to change local telephone companies would effectively defeat one of the great barriers to entry currently faced by those wishing to compete in the local market. A uniform number portability policy would be a great leap forward toward truly competitive markets.

The Commission should also continue its efforts toward allowing third-party access to advanced intelligent network ("AIN") features and functions,³⁶ which will eventually promote a reliable, integrated, and open public switched "network of networks" that encourages competition and innovation of all players.³⁷ Unbundling AIN could affect price caps, and, therefore, the Commission should ensure that, on a going-forward basis, the LECs are instructed to invest in and acquire the most open intelligent network architecture possible so as to avoid future costs associated with unbundling. It would be extremely inefficient and costly if the LECs were to deploy a "closed" network architecture, only to be required by future Commission orders to

³⁵ The Commission states that "As with expanded interconnection for special access, we will exclude changes in connection charges from price cap review, at least for an initial period." The Commission also stated: "We will apply non-streamlined tariff review standards to connection charges. After the initial implementation phase, however, connection charges may be sufficiently uniform to permit price cap treatment." *Special Access Order*, para. 83. [citation omitted]

³⁶ See, *In the matter of Intelligent Networks*, CC Docket No. 91-346, *Notice of Proposed Rulemaking*, 8 FCC Rcd 6813 (1993) (*Intelligent Network Order*).

³⁷ The Commission stated in its Order, "If third parties are given the means to access [AIN] capabilities, we believe that competition in [AIN] services would follow, and would result in benefits for consumers including the development innovative services and lower prices." *Intelligent Networks Order*, para. 17.

unbundle network components.³⁸ Furthermore, it would be inappropriate if LECs were subsequently to seek exogenous treatment for the costs associated with opening their networks.

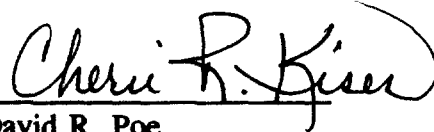
IX. Conclusion

In its review of LEC price cap performance, the Commission should explicitly recognize that, by any objective measurement, LECs continue to dominate the local exchange and interstate access market. The Commission should also consider the relationship between the price cap regime and LECs' preparation to enter new lines of business to ensure that LECs are not afforded any unfair advantage over their potential competitors. Finally, in conjunction with the goal of furthering the

³⁸ A closed network environment has many disadvantages for competitors. A closed network would thwart the Commission's pro-competition goals by delaying providers' ability to purchase the network components needed to provide services in competition with LEC services. A closed network also allows LECs to gain time and experience with new technology that facilitates the development of new services and to acquire a customer base for those new services ahead of the competition.

development of actual competition for local exchange and access services, the Commission should evaluate the impact of LEC price caps on the development of effective competition, and modify the structure of price caps as necessary consistent with that goal.

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